

Amendment No. 1 to SB0713

Johnson
Signature of Sponsor

AMEND Senate Bill No. 713*

House Bill No. 873

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 35-6-601, is amended by deleting the section in its entirety and by substituting instead the following:

Section 35-15-1101 controls all application and construction of chapter 6.

SECTION 2. Tennessee Code Annotated, Section 35-14-102 is amended by deleting subdivisions (1) and (3) and by substituting instead the following:

(1) "Governing instrument" means:

(A) A will, deed, trust instrument or agency agreement;

(B) For purposes of subdivision (1)(A), an agency agreement, includes but is not limited, to any agreement under which any delegation is made, either pursuant to § 35-15-807 or by anyone holding a power or duty pursuant to chapter 15, part 12;

(3) "Trustee" means any fiduciary as defined in § 35-15-103.

SECTION 3. Tennessee Code Annotated, Section 35-15-103 is amended by deleting subdivision (3)(B) and by adding the following new subdivisions:

() "Alter ego of a trustee" means, that absent clear and convincing evidence, no settlor of an irrevocable trust may be deemed to be the alter ego of a trustee of such trust; none of the following factors, by themselves or in combination, may be considered sufficient evidence for a court to conclude that the settlor controls a trustee, or is the alter ego of a trustee, of such trust:

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(A) Any combination of the factors listed in the definition of dominion and control over trust contained in this section;

(B) Isolated occurrences where the settlor has signed checks, made disbursements, or executed other documents related to such trust as a trustee, when in fact the settlor was not a trustee;

(C) Making any requests for distributions on behalf of beneficiaries; or

(D) Making any requests to the trustee to hold, purchase, or sell any trust property;

() "Another state" or "other state" means any state other than this state;

() "Beneficial interest" means a distribution interest or a remainder interest; provided however, a beneficial interest specifically excludes a power of appointment or a power reserved by a settlor;

() "Distribution beneficiary" means a beneficiary who is an eligible distributee or permissible distributee of the income or principal of a trust;

() "Distribution interest" means:

(A) An interest, other than a remainder interest, held by a distribution beneficiary under a trust and may be a current distribution interest or a future distribution interest;

(B) Relative to a distribution interest:

(i) Neither the existence of a distribution interest or the provision of services by a spouse in that spouse's capacity as a fiduciary of the

trust creating the distribution interest is relevant in the equitable division of marital property;

(ii) None of the factors in subdivision (B)(i) or the exercise or non-exercise of any power or discretion by a spouse in that spouse's capacity as a fiduciary of the trust creating the distribution interest (even if that spouse is also a beneficiary of the trust creating the distribution interest) are relevant to, indicative of or effect the transmutation or other conversion of separate property to community property;

(iii) The expending of any community funds by a spouse in that spouse's capacity as a fiduciary of the trust creating the distribution interest relative to the operation or maintenance of property related to a distribution interest is not relevant to or indicative of, and does not effect a transmutation or other conversion of separate property to community property;

(iv) Any funds expended pursuant to subdivision (B)(iii) shall be valid debts of the trust and shall be repaid to the community with appropriate interest;

(C) A distribution interest is classified as either a mandatory interest, a support interest or a discretionary interest; and although not the exclusive means to create each such respective distribution interest, absent clear and convincing evidence to the contrary, use of the example language accompanying the following definitions of each such respective distribution interest results in the indicated classification of distribution interest:

(i) A mandatory interest means a distribution interest in which the timing of any distribution must occur within one (1) year from the date the right to the distribution arises and the trustee has no discretion in

determining whether a distribution shall be made or the amount of such distribution; example distribution language indicating a mandatory interest includes, but is not limited to:

(a) All income shall be distributed to a named beneficiary;

or

(b) One hundred thousand dollars (\$100,000) a year shall be distributed to a named beneficiary;

(ii) A support interest means a distribution interest that is not a mandatory interest but still contains mandatory language such as "shall make distributions" and is coupled with a standard capable of judicial interpretation; example distribution language indicating a support interest includes, but is not limited to:

(a) The trustee shall make distributions for health, education, maintenance, and support;

(b) Notwithstanding the distribution language used, if a trust instrument containing such distribution language specifically provides that the trustee exercise discretion in a reasonable manner with regard to a discretionary interest, then notwithstanding any other provision of this subdivision defining distribution interests, the distribution interest shall be classified as a support interest;

(iii) A discretionary interest means any interest that is not a mandatory or a support interest and is any distribution interest where a trustee has any discretion to make or withhold a distribution; example distribution language indicating a discretionary interest includes, but is not limited to:

(a) The trustee, may, in the trustee's sole and absolute discretion make distributions for health, education, maintenance, and support;

(b) The trustee, in the trustee's sole and absolute discretion, shall make distributions for health, education, maintenance, and support;

(c) The trustee may make distributions for health, education, maintenance, and support;

(d) The trustee shall make distributions for health, education, maintenance, and support, however, the trustee may exclude any of the beneficiaries or may make unequal distributions among them; or

(e) The trustee may make distributions for health, education, maintenance, support, comfort, and general welfare;

(f) A discretionary interest may also be evidenced by:

(1) Permissive distribution language such as "may make distributions";

(2) Mandatory distribution language that is negated by the discretionary distribution language contained in the trust such as "the trustee shall make distributions in the trustee's sole and absolute discretion";

(g) An interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language shall be classified as a discretionary interest and not as a support or a mandatory interest;

(D)

(i) To the extent a trust contains distribution language indicating the existence of any combination of a mandatory, support and discretionary interest, that combined interest of the trust shall be divided and treated separately as follows:

(a) The trust shall be a mandatory interest only to the extent of the mandatory distribution language;

(b) The trust shall be a support interest only to the extent of such support distribution language; and

(c) The remaining trust property shall be held as a discretionary interest;

(ii) For purposes of this subdivision (D), a support interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language, shall be classified as a discretionary interest and not as a support interest;

() "Directed trust" means a trust where either through the terms of the trust, an agreement of the qualified beneficiaries or a court order, one or more persons is given the authority to direct or consent to a fiduciary's actual or proposed investment decision, distribution decision, or any other decision of the fiduciary;

() "Dominion and control over trust" means, that in the event a person challenges a settlor's or a beneficiary's influence over a trust, none of the following factors, alone or in combination, shall enter into a determination that dominion and control over a trust exists:

(A) The settlor or a beneficiary serving as a trustee, cotrustee or other fiduciary as described in § 35-15-508;

(B) The settlor or a beneficiary holds an unrestricted power to remove or replace a trustee, cotrustee or other fiduciary;

(C) The settlor or a beneficiary is a trust administrator, a general partner of a partnership, a manager of a limited liability company, an officer of a corporation, or holds any other managerial function relative to any type of entity specified in this subdivision () (C), or relative to any other type of entity not so specified, and part or all of the trust property consists of an interest in such entity;

(D) A person related by blood or adoption to the settlor or a beneficiary is appointed as a trustee, cotrustee or other fiduciary;

(E) The settlor's or a beneficiary's agent, accountant, attorney, financial advisor, or friend is appointed as a trustee, cotrustee or other fiduciary;

(F) A business associate is appointed as a trustee, cotrustee or other fiduciary;

(G) A beneficiary holds any power of appointment over any or all of the trust property;

(H) The settlor holds a power to substitute property of equivalent value for property held by the trust, regardless of whether such power is:

(i) Held in a fiduciary or nonfiduciary capacity;

(ii) Exercisable with or without the approval of any person in a fiduciary capacity; or

(iii) Exercisable with or without the approval of any person having an interest adverse to such settlor;

(I) A trustee, cotrustee or other fiduciary has the power to loan trust property to the settlor for less than a full and adequate rate of interest or without adequate security;

(J) Any language relative to the power to make any distribution provides for any discretion relative to such distribution;

(K) The trust has only one beneficiary eligible for current distributions; or

(L) The beneficiary is serving as a cotrustee or a trust advisor or trust protector under part 12, or as any other fiduciary;

() "Excluded fiduciary" means any trustee, trust advisor, or trust protector to the extent that, under the terms of a trust, an agreement of the qualified beneficiaries, or court order:

(A) The trustee, trust advisor, or trust protector is excluded from exercising a power, or is relieved of a duty, and

(B) The power or duty is granted or reserved to another person.

() "Fiduciary" means:

(A) A trustee, conservator, guardian, agent under any agency agreement or other instrument, an executor, personal representative or administrator of a decedent's estate, or any other party, including a trust advisor or a trust protector, who is acting in a fiduciary capacity for any person, trust, or estate;

(B) Fiduciary also means a trustee as defined in § 35-14-102;

(C) For purposes of subdivision () (A), an agency agreement, includes but is not limited to, any agreement under which any delegation is made, either pursuant to § 35-15-807 or by anyone holding a power or duty pursuant to part 12;

(D) For purposes of the definition of fiduciary in § 35-15-103, fiduciary does not mean any person who is an excluded fiduciary as such is defined in § 35-15-103;

() "Foreign" or "foreign country" means any jurisdiction, subdivision, territory or possession thereof, other than that of the United States of America or of a state;

() "Foreign jurisdiction" means any jurisdiction, subdivision, territory or possession thereof, other than this state;

() "Internal Revenue Code" means the Internal Revenue Code of 1986, as in effect on July 1, 2004, or as later amended;

() "Power of appointment" means:

(A) An inter vivos or testamentary power to direct the disposition of trust property, other than a distribution decision made by a trustee or other fiduciary to a beneficiary;

(B) Powers of appointment are held by the person to whom such power has been given, and not by a settlor in that person's capacity as settlor;

() "Reach" means with respect to a distribution interest or any power held by anyone relative to a trust, to subject such distribution interest or such power to a judgment, decree, garnishment, attachment, execution, levy, creditor's bill or other legal, equitable, or administrative process, relief, or control of any court, tribunal, agency, or other entity that, by power of law, is provided with powers or jurisdiction similar to those described in this subdivision;

() "Remainder interest" means an interest under which a trust beneficiary will receive property held by a trust outright at some time during the future; relative to a remainder interest:

(A) Neither the existence of a remainder interest or the provision of services by a spouse in that spouse's capacity as a fiduciary of the trust creating the remainder interest is relevant in the equitable division of marital property;

(B) None of the factors in subdivision () (A) or the exercise or non-exercise of any power or discretion by a spouse in that spouse's capacity as a fiduciary of the trust creating the remainder interest (even if that spouse is also a beneficiary of the trust creating the remainder interest) are relevant to, indicative

of or effect the transmutation or other conversion of separate property to community property;

(C) The expending of any community funds by a spouse in that spouse's capacity as a fiduciary of the trust creating the remainder interest relative to the operation or maintenance of property related to a remainder interest is not relevant to or indicative of, and does not effect a transmutation or other conversion of separate property to community property;

(D) Any funds expended pursuant to subdivision () (C) shall be valid debts of the trust and shall be repaid to the community with appropriate interest;

() "Reserved power" means a power held by a settlor;

() "This state" means the State of Tennessee;

() "Trust advisor" means any person described in § 35-15-1201(a); and

() "Trust protector" means any person described in § 35-15-1201(a).

SECTION 4. Tennessee Code Annotated, Section 35-15-105, is amended by deleting subsection (a) and by substituting instead the following:

(a) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee or any other fiduciary under this chapter, relations among trustees and such other fiduciaries, and the rights and interests of a beneficiary. The terms of a trust may expand, restrict, eliminate, or otherwise vary the duties and powers of a trustee, any such other fiduciary, relations among any of them, and the rights and interests of a beneficiary; provided, however, that nothing contained in this subsection shall be construed to override or nullify the provisions of subsection (b). The rule of statutory construction that states that statutes in derogation of the common law are to be strictly construed shall have no application to this section. Except as restricted by subsection (b), pursuant to this section, courts shall give maximum effect to the principle of freedom of disposition and to the enforceability of trust instruments.

SECTION 5. Tennessee Code Annotated, Section 35-15-105, is further amended by deleting subdivision (b)(3) and by substituting instead the following:

(b)

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries as the interests of such beneficiaries are defined under the terms of the trust, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

SECTION 6. Tennessee Code Annotated, Section 35-15-105, is further amended by adding the following new subsection (c):

(c) Any purpose enunciated as a material purpose of a trust in that trust's trust instrument shall be treated as a material purpose of that trust for all purposes of this chapter and chapter 16.

SECTION 7. Tennessee Code Annotated, Section 35-15-106, is amended by deleting the section in its entirety and by substituting instead the following:

35-15-106. Common law of trusts – Principles of equity.

(a) The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this state.

(b) Notwithstanding the provisions of subsection (a):

(1) No provision in a trust directing or authorizing accumulation of trust income shall be invalid; and

(2) The traditional common law distinction between a discretionary trust and a support trust and the dual judicial review standards related to this distinction shall be maintained. Unless specifically provided otherwise in this chapter, courts shall not consult, rely on or give any persuasive value to the Restatement (Third) of Trusts §§ 50, 56, 58, 59 or 60, nor any of the comments

under such sections or related thereto, none of which have any force or effect relative to trusts governed by the laws of this state.

SECTION 8. Tennessee Code Annotated, Section 35-15-107, is amended by deleting the section in its entirety and by substituting instead the following:

35-15-107. Governing Law.

(a) The validity, construction and administration of a trust are determined by the law of the jurisdiction designated in the terms of the trust instrument, which is called a state jurisdiction provision.

(b) When a state jurisdiction provision designates that the law of this state controls:

(1) This state and its courts have jurisdiction over a trust created in a foreign jurisdiction;

(2) The validity, construction, and administration of a trust are determined by the laws of this state, including but not limited to:

(A) The capacity of the settlor;

(B) The powers, obligations, liabilities, and rights of the trustees and other fiduciaries;

(C) The appointment and removal of the trustees and other fiduciaries;

(D) The existence and extent of all powers conferred on a trustee or other fiduciary, including but not limited to, any trustee's or other fiduciary's discretionary powers, as well as the existence and extent of all powers retained by a settlor and the validity of the exercise of any such power, whether conferred on a trustee or other fiduciary or retained by a settlor;

(3)

(A) Neither a trust nor any disposition made subject to the terms of such trust is subject to the laws of any foreign country, nor are any such trust or such disposition void, voidable, liable to be set aside or defective in any manner for any reason including but not limited to:

(i) The law of any foreign country prohibits or does not recognize the concept of a trust; or

(ii) The trust or disposition avoids or defeats any right, claim, or interest conferred by the law of a foreign country upon any person by reason of a personal relationship to the settlor or by way of heirship rights or contravenes any rule or law of a foreign country or any foreign country's judicial or administrative order or action intended to recognize, protect, enforce, or give effect to such right, claim, or interest;

(B) Relative to any foreign country or any interest in property arising or originating under the laws of any foreign country:

(i) No form of forced heirship, legitime, forced share or any similar heirship rights or form of transmission or transfer of property from a decedent or from a living person, or any restrictions on transmission or transfer of property from a decedent or a living person is recognized by this state; or

(ii) No heirship rights described in subdivision (C)(i) conferred under the law of a foreign country shall constitute an obligation or liability, the transfer, conveyance or devise of which, would violate title 66, chapter 3; and

(C) Subdivision (b)(3) shall apply to all realty or other forms of immovable property physically in this state, as well as to all personal or

movable property wherever situated if owned by a trust containing a state jurisdiction provision designating that the law of this state controls such trust;

(4) No judgment or other holding of any judicial body of any foreign country, including by not limited to, any court, administrative body or other entity or organization purportedly having the power to make judicial or administrative decisions of any foreign country, shall be recognized or enforced or give rise to any equitable forms of relief, including but not limited to, estoppel, to the extent such judgment or other holding concerns a trust containing a state jurisdiction provision designating that the law of this state controls such trust or to the extent such judgment or other holding concerns property held by such trust;

(5) If, in any action brought against a trustee or other fiduciary of a trust, any judicial body of any foreign country, including but not limited to, any court, administrative body or other entity or organization purportedly having the power to make judicial or administrative decisions of any foreign country, takes any action whereby such judicial body declines to apply the law of this state in determining the validity, construction, or administration of a trust, or the effect of a spendthrift provision or discretionary interest of a trust, the trustee or other fiduciary, as applicable, shall immediately upon the action of the judicial body of the foreign country and without the further order of any court of this state, cease in all respects to be trustee or other fiduciary, as applicable, of the trust and a vacancy in the office of trustee or other fiduciary, as applicable, shall immediately exist:

(A) Upon the existence of such vacancy, the trustee or other fiduciary, as applicable, has no power or authority other than to convey

the trust property to the successor trustee or other fiduciary who fills such vacancy as provided in subdivision (5)(B);

(B) Such vacancy shall be filled in the same manner as would a vacancy in trusteeship that is required to be filled, either as provided by § 35-15-704(c) if the trust is a noncharitable trust, or as provided by § 35-15-704(d) if the trust is a charitable trust; and

(C) Section 35-15-704(e) shall also apply relative to such trustee or other fiduciary, as applicable, in the same manner as that subsection does to trustees and vacancies in trusteeship in general; however, when exercising its power provided by § 35-15-704(e), the court shall consider the purposes of this subsection (b) and make any such appointments pursuant to § 35-15-704(e) in a manner designed to give full force and effect to this subsection (b) to the maximum extent allowed by the laws of this state or of the United States.

(c) In the absence of the existence of a state jurisdiction provision, the laws of the jurisdiction where the trust was executed determine the validity of the trust and the laws of descent, while the laws of the principal place of administration determine the administration of the trust.

SECTION 9. Tennessee Code Annotated, Section 35-15-108, is amended by:
deleting subsection (a) and by substituting instead the following:

(a) Without limiting or precluding other means for establishing a sufficient connection with a jurisdiction, the terms of a trust designating that jurisdiction's laws in a state jurisdiction provision are valid and controlling if:

(1) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) All or part of the administration occurs in the designated jurisdiction; which such administration, includes but is not limited to:

(A) Maintenance of some trust records physically in the designated jurisdiction; and

(B) Wholly or partly preparing or arranging for that preparation, either on an exclusive or a nonexclusive basis, in the designated jurisdiction of an income tax return that must be filed by the trust; or

(3) Some or all of the trust assets are deposited in the designated jurisdiction or physical evidence of such assets is held in the designated jurisdiction and the trust is being administered by a person defined in subdivision (a)(1). For purposes of this subdivision (a)(3), "deposited in the designated jurisdiction," includes assets being held in any of a checking account, time deposit, certificate of deposit, brokerage account, trust company fiduciary account, or other similar account or deposit that is located in the designated jurisdiction.

SECTION 10. Tennessee Code Annotated, Section 35-15-108, is further amended by adding the following new subsection (b) and redesignating existing subsections accordingly:

(b) Except as otherwise expressly provided by the terms of a governing instrument specifically addressing the governing law for trust administration or by court order, the laws of this state shall govern the administration of a trust while the trust is administered in this state. Without precluding other means for establishing that a trust is administered in this state, if any of the activities described in subsection (a) occur in this state, the trust is administered in this state.

SECTION 11. Tennessee Code Annotated, Section 35-15-408, is amended by deleting subsection (b) and by substituting instead:

(b) A trust authorized by this section may be enforced by any of the following who are appointed under the terms of a trust: a trustee, trust advisor, trust protector or other person or, if no person is so appointed, by a person appointed by the court. In addition, a person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

SECTION 12. Tennessee Code Annotated, Section 35-15-409, is amended by deleting subdivision (2) and by substituting instead:

(2) A trust authorized by this section may be enforced by any of the following who are appointed under the terms of a trust: a trustee, trust advisor, trust protector or other person; or if no person is so appointed, by a person appointed by the court.

SECTION 13. Tennessee Code Annotated, Section 35-15-413(a), is amended by deleting the language “or wasteful” before the colon in subsection (a) and by instead substituting the language “obsolete or ineffective”.

SECTION 14. Tennessee Code Annotated, Section 35-15-413, is further amended by deleting the remainder of the language following the last comma in subdivision (a)(3) and by instead substituting the words “in a manner that fulfills as nearly as possible the settlor’s charitable intent and purposes.”

SECTION 15. Tennessee Code Annotated, Section 35-15-501, is amended by deleting the section in its entirety and by substituting instead the following:

35-15-501 Application of part 5; rights of beneficiary’s creditor or assignee.

This part applies to a creditor’s or assignee’s claims and ability to reach mandatory, support and discretionary interests regardless of whether such interests are subject to a spendthrift provision. To the extent not otherwise prohibited by this part, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary’s distribution interest by attachment of present or future distributions to or for the benefit of

the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

SECTION 16. Tennessee Code Annotated, Section 35-15-502, is amended by deleting the current subsection (c) and by substituting instead the following subsection (c) and by adding the following new subsections:

(c) A spendthrift provision applies to all beneficial interests, including distribution interests and remainder interests.

(d) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and a creditor or assignee of the beneficiary may not reach any of, the interest, or a present, future or prospective distribution at the trust level. Similarly, no creditor or assignee of the beneficiary may force any distribution from the trust. This subsection remains applicable regardless of the beneficiary's potential right to force a distribution under § 35-15-814.

(e) Notwithstanding any other provision of this section to the contrary, regardless of whether a beneficiary has any outstanding creditor, a trustee, cotrustee or other fiduciary of a trust subject to a spendthrift provision may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary. No trustee, cotrustee or other fiduciary is liable to any creditor for paying the expenses of a beneficiary under a trust subject to a spendthrift provision. This subsection remains applicable regardless of whether the beneficiary for whom such direct payment was made held a mandatory, support, discretionary or remainder interest.

SECTION 17. Tennessee Code Annotated, Section 35-15-504, is amended by deleting the entire section and by substituting instead the following:

35-15-504 Discretionary interests – Effect thereof.

(a) A discretionary interest is neither a property interest nor an enforceable right; it is a mere expectancy.

(b) Relative to a discretionary interest, whether or not a trust contains a spendthrift provision:

(1) No creditor or assignee shall force or otherwise reach a distribution with regard to a discretionary interest;

(2) No creditor or assignee shall require a trustee, cotrustee or other fiduciary to exercise the trustee's, cotrustee's or other fiduciary's discretion to make a distribution with regard to a discretionary interest;

(3) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee, cotrustee or other fiduciary of a discretionary interest may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary;

(4) No trustee, cotrustee or other fiduciary is liable to any creditor or assignee for paying the expenses of a beneficiary of a discretionary interest;

(5)

(A) Regardless of whether a beneficiary holding a discretionary interest is also a trustee, cotrustee or other fiduciary, subdivisions (b)(1) through (b)(4) remain applicable if:

(i) The beneficiary-fiduciary does not have the discretion to make or participate in making distributions to himself or herself;

(ii) The beneficiary-fiduciary's discretion to make or participate in making distributions to himself or herself is limited by an ascertainable standard; or

(iii) The beneficiary-fiduciary's discretion to make or participate in making distributions to himself or herself is

exercisable only with the consent of a cotrustee or another person holding an adverse interest.

(B) A creditor or assignee may compel or otherwise reach a distribution only to the extent the creditor or assignee may compel or otherwise reach a distribution if the beneficiary was not acting as a trustee, cotrustee or other fiduciary.

SECTION 18. Tennessee Code Annotated, Section 35-15-505, is amended by renumbering subdivision (a)(5) as subdivision (a)(6).

SECTION 19. Tennessee Code Annotated, Section 35-15-505, is further amended by adding a new subdivision (a)(5) as follows:

(a)

(5) Notwithstanding any law to the contrary, neither a creditor nor any other person shall have any claim or cause of action against the trustee or other fiduciary, or an advisor of an irrevocable special needs trust. For purposes of this subdivision (a)(5), an advisor of an irrevocable special needs trust includes any person involved in the counseling, drafting, preparation, execution or funding of an irrevocable special needs trust.

SECTION 20. Tennessee Code Annotated, Section 35-15-505, is further amended by deleting from subdivision (a)(2) the introductory phrase: "Except as provided in chapter 16 of this title regarding investment services trusts and subdivision (a)(3) regarding an irrevocable special needs trust," and replacing it with the introductory phrase: "Except as provided in chapter 16 of this title regarding investment services trusts and subdivisions (a)(3) through (a)(5) regarding an irrevocable special needs trust,".

SECTION 21. Tennessee Code Annotated, Section 35-15-505, is further amended by adding the following new subsections (e),(f) and (g):

(e) For purposes of subdivision (a)(2) and subsection (g), a person who is the holder of a power of withdrawal is not considered a settlor of the trust by failing to exercise that power of withdrawal or letting that power of withdrawal lapse.

(f) For purposes of subdivision (a)(2) and subsection (g), a person who becomes a beneficiary of a trust due to the exercise of a power of appointment by someone other than such person shall not be considered a settlor of the trust.

(g)

(1) Notwithstanding § 66-3-310, no person shall bring an action with respect to a transfer of property to a spendthrift trust:

(A) If the person is a creditor when the transfer is made, unless the action is commenced within the later of two (2) years after the transfer is made or six (6) months after the person discovers or reasonably should have discovered the transfer; or

(B) If the person becomes a creditor after the transfer is made, unless the action is commenced within two (2) years after the transfer is made; and

(2) If subdivision (g)(1) applies:

(A) A person shall be deemed to have discovered the existence of a transfer at the time any public record is made of the transfer, including but not limited to, a conveyance of real property that is recorded in the office of the county register of deeds of the county in which the property is located or the filing of a financing statement under title 47, chapter 9, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state;

(B) No creditor shall bring an action with respect to a transfer of property to a spendthrift trust unless that creditor proves by clear and convincing evidence that the settlor's transfer to the trust was made with the intent to defraud that specific creditor; and

(i) Notwithstanding any law to the contrary, neither a creditor nor any other person shall have any claim or cause of action against the trustee or other fiduciary or an advisor of a spendthrift trust if that claim or cause of action is based in any way on any person availing themselves of the benefits of this subsection;

(ii) For purposes of subdivision (g)(2)(C), an advisor of a spendthrift trust includes, but is not limited to, any person involved in the counseling, drafting, preparation, execution or funding of a spendthrift trust;

(iii) For purposes of subdivision (g)(2)(C)(i), counseling, drafting, preparation, execution or funding of a spendthrift trust includes the counseling, drafting, preparation, execution and funding of a limited partnership, a limited liability company or any other type of entity if interests in the limited partnership, limited liability company or other entity are subsequently transferred to a spendthrift trust;

(3) Notwithstanding subdivision (g)(2)(C), in the same manner as provided other than by this section to trusts in general, a beneficiary, settlor, cotrustee, trust advisor or trust protector retains the right to bring a claim against a trustee or against another cotrustee, trust advisor, trust protector or any of their predecessors; however, no such claim shall arise solely because a person

availed themselves, or attempted to avail themselves, of the benefits of this subsection;

(4) If more than one transfer of property is made to a spendthrift trust, the subsequent transfer of property to the spendthrift trust shall be disregarded for the purpose of determining whether a person may bring an action pursuant to this subsection with respect to a prior transfer of property to the spendthrift trust; and any distribution to a beneficiary from the spendthrift trust shall be deemed to have been made from the most recent transfer made to the spendthrift trust;

(5) With the exception of any claim brought pursuant to subdivision (g)(3), notwithstanding any other provision of law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against the trustee, other fiduciary or advisor of a spendthrift trust if, as of the date such action is brought, an action by a creditor with respect to a transfer of property to the spendthrift trust would be barred pursuant to this subsection; and

(6) This subsection shall not abridge the rights of a creditor, to the extent otherwise provided by this section, to reach the maximum amount that can be distributed to or for the settlor's benefit under a spendthrift trust.

SECTION 22. Tennessee Code Annotated, Section 35-15-506, is amended by deleting the section in its entirety and by substituting instead the following:

35-15-506 Distributions relative to support, mandatory and certain reminder interests.

(a) Relative to a support interest, whether or not a trust contains a spendthrift provision:

(1) Although a beneficiary of a support interest has enforceable rights under § 35-15-814, those rights do not raise the beneficiary's support interest to the level of a property interest;

(2) No creditor or assignee shall reach that support interest until a distribution from the support interest is actually made to the beneficiary;

(3) After all or a portion of a support interest is distributed to the beneficiary, no portion of the distribution made from the support interest shall be reached by a creditor or assignee of the beneficiary except to the extent that the distribution made from the support interest exceeds the amount necessary for the health, education, maintenance and support of the beneficiary who received the distribution made from the support interest;

(4) In the case of a beneficiary who holds a support interest, the use or enjoyment of property belonging to the trust by that beneficiary shall not be transferred and shall not be reached by creditors or assignees of that beneficiary;

(5) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee or other fiduciary of a support interest may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary; and

(6) No trustee or other fiduciary is liable to any creditor or assignee for paying the expenses of a beneficiary of a support interest.

(b) Relative to a mandatory interest, whether or not a trust contains a spendthrift provision:

(1) While a court may order a trustee or other fiduciary to distribute a past due mandatory distribution to its beneficiary, no court shall order a trustee or other fiduciary to distribute such past due mandatory distribution directly to a creditor or assignee;

(2) Regardless of whether a beneficiary has any outstanding creditors or assignees, a trustee or other fiduciary of a mandatory interest may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary;

(3) No trustee or other fiduciary is liable to any creditor or assignee for paying the expenses of a beneficiary of a mandatory interest.

(c) Although a remainder interest may be an enforceable right, where it is not absolutely certain based on the language of the trust that the remainder interest will be distributed within one (1) year, it shall not be classified as a property interest. This subsection does not affect eligibility for any public assistance program administered by the department of human services.

SECTION 23. Tennessee Code Annotated, Title 35, Chapter 15, Part 5 is amended by adding the following new section:

35-15-508. Removal or replacement power over trustee or other fiduciary not reachable by holder's creditors -- Interests of beneficiary who is also a trustee or other fiduciary not reachable.

(a) No creditor or assignee of a beneficiary shall have the power to reach an interest of a beneficiary or any other person who holds an unconditional or conditional removal or replacement power over a trustee or other fiduciary. Such power over a trustee or other fiduciary is personal to the holder and shall not be exercised by the holder's creditors. No court shall direct a holder to exercise the power.

(b) Subject to § 35-15-504(b)(3):

(1) No creditor or assignee of a beneficiary may reach an interest of a beneficiary who is also a trustee, cotrustee or other fiduciary, or otherwise compel a distribution because the beneficiary is then serving as a trustee, cotrustee or other fiduciary; and

(2) No court may foreclose against a beneficiary's interest described in subdivision (b)(1).

SECTION 24. Tennessee Code Annotated, Title 35, Chapter 15, Part 5 is further amended by adding the following new section:

35-15-509. Judicial foreclosure of beneficial interests, powers of appointment, and reserved powers prohibited -- Certain reaches prohibited.

Regardless of whether or not a trust contains a spendthrift provision:

(1) No beneficial interest, power of appointment, or reserved power in a trust shall be judicially foreclosed;

(2) No creditor or assignee shall reach a power of appointment or a remainder interest at the trust level and such creditor or assignee shall wait until any funds are distributed relative to such power of appointment or remainder interest before such creditor or assignee may reach such funds; and

(3) No power of appointment is a property interest.

SECTION 25. Tennessee Code Annotated, Section 26-4-101 is amended by deleting the language “§§ 35-15-501 – 35-15-507” and substituting instead the language “§§ 35-15-501 – 35-15-509”.

SECTION 26. Tennessee Code Annotated, Section 35-15-703, is amended by adding a new subsection (i) as follows:

(i) A trustee shall keep each cotrustee and any other fiduciary reasonably informed about the administration of the trust, to the extent the trustee has knowledge that each such cotrustee or other fiduciary does not have such knowledge of the trustee's actions, or regarding other material information or the availability of such information, related to the administration of the trust that would be reasonably necessary for each such cotrustee or other fiduciary to perform his or her duties as a trustee or other fiduciary of the trust.

SECTION 27. Tennessee Code Annotated, Section 35-15-708, is amended by deleting the section in its entirety and by substituting instead the following:

35-15-708. Compensation of trustees, trust advisors and trust protectors.

(a) If the terms of a trust do not specify a trustee's, trust advisor's or trust protector's compensation, and if the settlor, if living, or otherwise a majority of the qualified beneficiaries as defined in § 35-15-103(13)(A), have not otherwise agreed, a trustee, trust advisor or trust protector is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify a trustee's, trust advisor's or trust protector's compensation, the trustee, trust advisor or trust protector is entitled to be compensated as specified in the trust, but the court may allow more or less compensation if:

(1) The duties of the trustee, trust advisor or trust protector are substantially different from those contemplated when the trust was created; or

(2) The compensation specified by the terms of the trust would be unreasonably low or high.

(c) Factors for the court to consider in deciding upon a trustee's, trust advisor's or trust protector's compensation shall include the size of the trust, the nature and number of the assets, the income produced, the time and responsibility required, the expertise required, any management or sale of real property or closely held business interests, any involvement in litigation to protect trust property, and other relevant factors.

(d) Subject to the court's authority as provided in subsection (b), regardless of its form of entity, the fees set forth in the published fee schedule of a trustee, trust advisor or trust protector that is regulated by the department of financial institutions, the equivalent regulatory agency of another state, the office of the comptroller of the

currency or the office of thrift supervision shall be presumed to be reasonable, unless otherwise provided by the terms of the trust.

SECTION 28. Tennessee Code Annotated, Section 35-15-709, is amended by deleting the section in its entirety and by substituting instead the following:

(a) A trustee, trust advisor or trust protector is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) Expenses that were properly incurred in the administration of the trust; and

(2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance, either by the trustee, trust advisor or trust protector or by a person named in § 35-15-701(c)(1), of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

SECTION 29. Tennessee Code Annotated, Title 35, Chapter 15, Part 7 is amended by adding the following new sections:

35-15-710 Directed trusts.

If the terms of the trust, an agreement of the qualified beneficiaries, or a court order requires a trustee, trust advisor, or trust protector to follow the direction of a trust advisor or trust protector, and the trustee, trust advisor, or trust protector acts in accordance with such direction, then the trustee, trust advisor, or trust protector so directed shall be treated as an excluded fiduciary.

35-15-711 Directed Trusts; Accepting or declining fiduciary appointment.

(a) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee already being provided for in § 35-15-701(a), may accept their appointment as such respective fiduciary in a like manner as provided for a trustee under § 35-15-701(a).

(b) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee already being provided for in § 35-15-701(b), may reject their appointment as such respective fiduciary in a like manner as provided for a trustee under § 35-15-701(b).

(c) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee already being provided for in § 35-15-701(c), may, without accepting their appointment as such respective fiduciary, carry out the appropriate activities relative to such respective fiduciary as are provided for a trustee under § 35-15-701(c).

35-15-712 Directed Trusts; Fiduciary's bond.

(a) Section 35-15-702 relative to trustee's bonds apply to trust advisors, trust protectors or other fiduciaries other than cotrustees, such cotrustees already being provided for in § 35-15-702.

(b) When exercising its powers under this section relative to bonds, the court shall consider the powers, duties and liabilities relative to such respective fiduciaries other than a cotrustee and whether any of such respective fiduciaries are excluded fiduciaries.

35-15-713 Vacancy; Directed Trusts.

(a) Except as otherwise provided by the terms of the trust upon obtaining knowledge of a vacancy in the office of trust advisor or trust protector, the trustee shall be vested with any fiduciary power or duty that otherwise would be vested in the trustee but that by the terms of the trust was vested in the trust advisor or trust protector, until such time that the vacancy in the office of trust advisor or trust protector, as applicable is filled.

(b) Such vacancy shall be filled in the same manner as would a vacancy in trusteeship that is required to be filled, either as provided by § 35-15-704(c) if the trust is a noncharitable trust, or as provided by § 35-15-704(d) if the trust is a charitable trust. §

35-15-704(e) shall also apply relative to trust advisors and trust protectors in the same manner as that subsection does to trustees and vacancies in trusteeship.

(c) Notwithstanding subsection (a), a trustee shall not be liable for failing to exercise or assume any power or duty held by a trust advisor or trust protector and conferred upon the trustee by subsection (a) for the sixty-day period immediately following the date the trustee obtains knowledge of such vacancy.

35-15-714 Directed Trusts; Resignation of fiduciary.

(a) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee's resignation already being provided for in § 35-15-705, may resign their appointment as such respective fiduciary in a like manner as provided for a trustee under § 35-15-705.

(b) When exercising its powers under this section relative to resignation, the court shall consider the powers, duties and liabilities relative to such respective fiduciaries other than a cotrustee and whether any of such respective fiduciaries are excluded fiduciaries.

35-15-715 Directed Trusts; Removal of fiduciary.

(a) A trust advisor, trust protector or other fiduciary other than a cotrustee, such cotrustee's removal already being provided for in § 35-15-706, may be removed as such respective fiduciary in a like manner as provided for a trustee under § 35-15-706.

(b) When exercising its powers under this section relative to removal of such respective fiduciary, the court shall consider the powers, duties and liabilities relative to such respective fiduciaries other than a cotrustee and whether any of such respective fiduciaries are excluded fiduciaries.

SECTION 30. Tennessee Code Annotated, Section 35-15-802(g)(5) is amended by deleting that subdivision and by substituting instead the following:

(g)

(5) For purposes of this section, "fiduciary" means any fiduciary as defined in § 35-15-103, as well as any other fiduciary; and

SECTION 31. Tennessee Code Annotated, Section 35-15-808 is amended by deleting subsections (b), (d) and (e) and by substituting instead new subsections (b), (d), (e) and (f) as follows:

(b) If the terms of a trust, an agreement of the qualified beneficiaries, or a court order, confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power.

(d) Unless the terms of a trust provide otherwise, if a person holds a power to perform any act in reliance on §§ 35-3-122 and 35-3-123, and that power holder is other than a beneficiary, that person is a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to perform any act under this subsection is liable for any loss that results from breach of a fiduciary duty. In so following the directions of such person the trustee is protected from liability as provided in §§ 35-3-122 and 35-3-123.

(e) If a person holds a power to direct pursuant to part 12 of this chapter, that person is a trust advisor, trust protector or both. Such power holder is subject to all the provisions of part 12, including any duties prescribed by part 12 and any provisions that make the power holder a fiduciary. Any trustee or other person that under part 12 is relieved of any duty or any liability, or is otherwise protected under part 12, shall be so relieved and otherwise protected.

(f) Transitional provisions applicable to this section shall be as follows:

(1) Powers to direct or perform any act held in reliance on or that are subject to §§ 35-3-122 and 35-3-123 that are in existence prior to July 1, 2013,

remain effective thereafter and remain subject to the provisions of those sections and their protections;

(2) Notwithstanding subdivision (f)(1), should any power that is described in part 12 of this chapter be held under a trust instrument that was in existence or became irrevocable before July 1, 2013, and that power is not held in reliance on nor is it subject to §§ 35-3-122 and 35-3-123, then from July 1, 2013, all law relative to such power shall be controlled by and subject to part 12 of this chapter, along with any amendments made to this chapter in furtherance of the implementation and effectiveness of such part 12; and

(3) For all trust instruments entered into, that become irrevocable or that are amended relative to any power that is described in part 12 of this chapter on or after July 1 2013, part 12 of this chapter, along with any amendments made to this chapter in furtherance of the implementation and effectiveness of such part 12, shall be the exclusive method to create a directed trust or a provision regarding such and shall control such. Relative to trusts described in this subdivision and subdivision (f)(2), §§ 35-3-122 and 35-3-123 shall be of no further force and effect.

SECTION 32. Tennessee Code Annotated, Section 35-15-813 is amended by adding a the following new subdivision (a)(3):

(a)

(3) The requirements of subdivisions (a)(1) and (a)(2) shall also apply to the benefit of anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment.

SECTION 33. Tennessee Code Annotated, Section 35-15-813 is further amended by deleting subsection (b) and substituting instead the following:

(b) The trustee of an irrevocable or non-grantor trust within sixty (60) days after the acceptance and funding of a trust, excluding nominal funding for the trust to have corpus or the depositing of insurance policies on the life of a living person, shall notify each current income beneficiary, each vested ultimate beneficiary of a remainder interest and anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment, that the trust has been established.

SECTION 34. Tennessee Code Annotated, Section 35-15-813 is further amended by adding a new subdivision (b)(2)(D) as follows:

(b)

(2)

(D) If for anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment, all of the information required by subdivisions (b)(2)(A) through (C) necessary or beneficial for that person to effectively determine whether or not to exercise that power of appointment.

SECTION 35. Tennessee Code Annotated, Section 35-15-813 is further amended by deleting subsections (c) through (e) and substituting new subsections (c) through (e) and adding a new subsection (h) as follows:

(c) Upon the termination of an interest of any one (1) or more of the current income beneficiaries:

(1) The trustee shall similarly notify the income beneficiaries who are takers of the terminated interest of their interest by sending or delivering them the notice required in subsection (b); and

(2) If at that time the period described in subsection (b) has lapsed, the trustee shall similarly notify anyone who, in a capacity other than that of a

fiduciary, as defined by § 35-15-103, holds a power of appointment by sending or delivering to such person the notice required in subsection (b).

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given. Anyone who, in a capacity other than that of a fiduciary, as defined by § 35-15-103, holds a power of appointment has the same power as provided a beneficiary in this subsection to waive reports and other information and to withdraw a waiver previously given.

(e) Subsections (a) and (b) shall not apply to the extent that the terms of the trust provide otherwise or the settlor of the trust, or a trust protector or trust advisor under part 12 that holds the power to so direct, directs otherwise in a writing delivered to the trustee.

(h) A trust advisor, trust protector, or other fiduciary designated by the terms of the trust shall keep each excluded fiduciary designated by the terms of the trust reasonably informed about:

(1) The administration of the trust with respect to any specific duty or function being performed by the trust advisor, trust protector, or other fiduciary to the extent that the duty or function would normally be performed by the excluded fiduciary or to the extent that providing such information to the excluded fiduciary is reasonably necessary for the excluded fiduciary to perform its duties; and

(2) Any other material information that the excluded fiduciary would be required to disclose to the specified beneficiaries under subsection (a) regardless of whether the terms of the trust relieve the excluded fiduciary from providing such information to qualified beneficiaries. Neither the performance nor the failure to perform of a trust advisor, trust protector, or other fiduciary designated

by the terms of the trust as provided in this subsection shall affect the limitation on the liability of any excluded fiduciary provided by part 12 of this chapter.

SECTION 36. Tennessee Code Annotated, Section 35-15-814, is amended by deleting the section in its entirety and substituting instead the following:

35-15-814. Exercise of Powers Over Discretionary and Other Interests; Tax Savings.

(a) Relative to exercise of powers over discretionary and other interests:

(1) "Improper motive" means to demonstrate action such as the following:

(A) A trustee refusing to make or limiting distributions to beneficiaries other than the trustee due to the trustee's self interest when the trustee also holds a beneficial interest subject to a discretionary interest; or

(B) A trustee making a distribution in excess of an ascertainable standard to himself or herself as beneficiary when the trustee is restricted by an ascertainable standard in the trust.

(2) Unless otherwise provided in the trust:

(A) If the settlor's spouse is named as a beneficiary, the settlor's spouse is still living and the trust is classified as a support trust, then the trustee shall consider the resources of the settlor's spouse, including the settlor's obligation of support, prior to making a distribution; and

(B) In all other cases, unless otherwise provided in the trust, the trustee need not consider the beneficiary's resources in determining whether a distribution should be made.

(b) The following provisions apply only to discretionary interests:

(1) A discretionary interest is neither a property interest nor an enforceable right; it is a mere expectancy;

(2) A court may review a trustee's distribution discretion only if the trustee acts dishonestly, acts with an improper motive, or fails to act if under a duty to do so;

(3) A reasonableness standard shall not be applied to the exercise of discretion by the trustee with regard to a discretionary interest;

(4) Other than for the three circumstances listed in subdivision (b)(2), a court has no jurisdiction to review the trustee's discretion or to force a distribution; and

(5) Absent express language in the trust instrument to the contrary, in the event that the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, the trustee may distribute all of the accumulated, accrued, or undistributed income and principal to one beneficiary in the trustee's discretion.

(c) The following provisions apply only to mandatory or support interests:

(1) A beneficiary of a mandatory or a support interest has an enforceable right to a distribution pursuant to a court's review;

(2) A trustee's distribution decision may be reviewed for unreasonableness, dishonesty, improper motivation, or failure to act if under a duty to do so; and

(3) In the case of a support interest, nothing in this section shall raise a beneficiary's support interest to the level of a property interest.

(d) Unless otherwise provided in subsection (f), and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or

for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard; and

(2) A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(e) A power that is limited or prohibited by subsection (d) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(f) Subsection (d) shall not apply to:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code was previously allowed;

(2) Any trust during any period that the trust may be revoked or amended by its settlor; or

(3) A trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

SECTION 37. Tennessee Code Annotated, Section 35-15-816(b)(19), is amended by deleting the phrase "provided, however, that this power shall not apply to any beneficiary's interest that is subject to a spendthrift provision;".

SECTION 38. Tennessee Code Annotated, Section 35-15-816(b)(27), is amended by adding the following new subdivisions:

(E) The exercise of the power to appoint principal under subdivision (b)(27)(A) shall be considered an exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate;

(F) The second trust:

(i) May confer a power of appointment upon a beneficiary of the original trust to whom or for the benefit of whom the trustee has the power to distribute principal of the original trust;

(ii) The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the original or second trust; and

(iii) The power of appointment conferred upon a beneficiary must preclude any exercise that would extend the permissible period of the rule against perpetuities that applies to the trust;

(G) If any contribution to the original trust qualified for the annual exclusion under § 2503(b) of the Internal Revenue Code, the marital deduction under §§ 2056(a) or 2523(a) of the Internal Revenue Code, or the charitable deduction under §§ 170(a), 642(c), 2055(a) or 2522(a) of the Internal Revenue Code, is a direct skip qualifying for treatment under § 2642(c) of the Internal Revenue Code, or qualified for any other specific tax benefit that would be lost by the existence of the authorized trustee's authority under subdivision (b)(27)(A) for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code, then the authorized trustee shall not have the power to distribute the principal of a trust pursuant to subdivision (b)(27)(A) in a manner that would prevent the contribution to the original trust from qualifying for or would reduce the exclusion, deduction, or other tax benefit that was originally claimed with respect to that contribution;

(H) During any period when the original trust owns stock in a subchapter S corporation as defined in § 1361(a)(1) of the Internal Revenue Code, an authorized trustee shall not exercise a power authorized by subdivision (b)(27)(A) to distribute part

or all of the stock of the S corporation to a second trust that is not a permitted shareholder under § 1361(c)(2) of the Internal Revenue Code;

(I) This section applies to any trust that is administered in this state; and

(J) For purposes of this section, the term “original trust” refers to the trust from which principal is being distributed and the phrase “second trust” refers to the trust to which assets are being distributed from the original trust.

SECTION 39. Tennessee Code Annotated, Section 35-15-901, is amended by deleting the section in its entirety and by substituting instead the following:

35-15-901. Uniform Principal and Income Act and Tennessee Uniform Prudent Investor Act of 2002 incorporated by reference

Title 35, chapter 6 and chapter 14 are incorporated in this chapter by reference.

SECTION 40. Tennessee Code Annotated, Section 35-15-1005, is amended by adding the following new sections:

(d) A trustee may not commence a proceeding against a cotrustee or a former trustee for breach of trust more than one (1) year after the date the trustee or a representative of the trustee was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(e) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trustee or the trustee’s representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(f) If subsection (d) does not apply, a judicial proceeding by a trustee against a cotrustee or former trustee for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the cotrustee or a former trustee;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(g) A trust advisor or trust protector may not commence a proceeding against a trustee or a former trustee for breach of trust more than one (1) year after the date the trust advisor or trust protector or the respective representative of each was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(h) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trust advisor or trust protector or the respective representative of each knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(i) If subsection (g) does not apply, a judicial proceeding by a trust advisor or trust protector against a trustee or former trustee for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trustee or a former trustee;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(j) Notwithstanding subsections (d) – (i), no trustee, trust advisor or trust protector, may commence a proceeding against a trustee or a former trustee if, under § 35-15-1005 (a) – (c) , none of the beneficiaries may commence a proceeding against the cotrustee or former trustee for such breach of trust.

SECTION 41. Tennessee Code Annotated, Title 35, Chapter 15, Part 10 is amended by adding the following as a new, appropriately numbered section:

§ 35-15-1014. Enforcement of No-contest, In Terrorem or Forfeiture Provisions.

(a) For the purposes of this section, "no-contest provision" includes a "no-contest provision," "in terrorem provision" or "forfeiture provision" of a trust instrument. A "no-contest provision" means a provision that, if given effect, would reduce or eliminate the interest of any beneficiary of such trust who, directly or indirectly, initiates or otherwise pursues:

(1) Any action to contest the validity of the trust or the terms of the trust;

(2) Any action to set aside or vary the terms of the trust;

(3) Any action to challenge the acts of the trustee or other fiduciary of the trust in the performance of the trustee's or other fiduciary's duties as described in the terms of the trust; or

(4) Any other act or proceedings to frustrate or defeat the settlor's intent as expressed in the terms of the trust.

(b) Regardless of whether or not the beneficiary sought, received or relied upon legal counsel, a no-contest provision shall be enforceable according to the express terms of the no-contest provision without regard to the presence or absence of probable cause for, or the beneficiary's good or bad faith in, taking the action that would justify the complete or partial forfeiture of the beneficiary's interest in the trust under the terms of the no-contest provision. A no-contest provision shall be unenforceable to the extent that the trust is invalid because of fraud, duress, undue influence, lack of testamentary capacity, or any other reason. In the case of an action solely to challenge the acts of the trustee or other fiduciary of the trust, a no-contest provision shall be unenforceable to the extent that the trustee or other fiduciary has committed a breach of fiduciary duties or breach of trust.

(c) Subsection (b) shall not apply to:

(1) Any action brought by the trustee or any other fiduciary serving under the terms of the trust, unless the trustee or other fiduciary is a beneficiary against whom the no-contest provision is otherwise enforceable;

(2) Any agreement among the beneficiaries and any other interested persons in settlement of a dispute or resolution of any other matter relating to the trust, including without limitation any nonjudicial settlement agreement;

(3) Any action to determine whether a proposed or pending motion, petition, or other proceeding constitutes a contest within the meaning of a no-contest provision;

(4) Any action brought by a beneficiary or on behalf of any such beneficiary for a construction or interpretation of the terms of the trust; or

(5) Any action brought by the attorney general for a construction or interpretation of a charitable trust or a trust containing a charitable interest if a provision exists in a trust purporting to penalize a charity or charitable interest for contesting the trust if probable cause exists for instituting proceedings.

(d) Pursuant to this section, courts shall enforce the settlor's intent as reflected in a no-contest provision to the greatest extent possible.

SECTION 42. Tennessee Code Annotated, Section 35-15-1101, is amended by deleting the section in its entirety and by substituting instead the following:

35-15-1101.

(a) Numerous provisions of each of the following have been modified extensively relative to their respective uniform acts as such uniform acts were drafted and have been amended by the Uniform Law Commission, also known as the National Conference of Commissioners of Uniform State Laws:

(1) Chapter 6, the Uniform Principal and Income Act;

(2) Chapter 14, the Tennessee Uniform Prudent Investor Act of 2002;
and

(3) Chapter 15, the Tennessee Uniform Trust Code.

(b) These modifications were undertaken deliberately and after significant consideration:

(1) Therefore, in applying and construing title 35, no consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states, including any other state that has enacted laws covering the same general subject matter as chapters 9, 14 or 15, either by enacting such respective uniform acts as such uniform acts were originally drafted or as such were originally drafted and subsequently have been amended, or by enacting laws based on or similar to such uniform acts as originally drafted or as such have been amended; and

(2) Unless specifically provided otherwise in this chapter, chapter 6 or chapter 14, courts shall not consult, rely on or give any persuasive value to such uniform acts or any respective other state's acts based on or similar to such uniform acts, or any comments accompanying any such uniform acts or any respective other state's acts based on or similar to such uniform acts; none of which have any force or effect relative to trusts governed by the laws of this state.

SECTION 43. Tennessee Code Annotated, Title 35, Chapter 15, is amended by adding the following as a new part 12:

§ 35-15-1201. Powers of Trust Advisors and Trust Protectors.

(a) A trust protector or trust advisor is any person, and may be a committee of more than one person, other than a trustee, who under the terms of the trust, an

agreement of the qualified beneficiaries, or a court order has a power or duty with respect to a trust, including but not limited to, one or more of the following powers:

(1) The power to modify or amend the trust instrument to achieve favorable tax status or respond to changes in any applicable federal, state, or other tax law affecting the trust, including but not limited to, any rulings, regulations, or other guidance implementing or interpreting such laws;

(2) The power to amend or modify the trust instrument to take advantage of changes in the rule against perpetuities, laws governing restraints on alienation, or other state laws restricting the terms of the trust, the distribution of trust property, or the administration of the trust;

(3) The power to appoint a successor trust protector or trust advisor;

(4) The power to review and approve a trustee's trust reports or accountings;

(5) The power to change the governing law or principal place of administration of the trust;

(6) The power to remove and replace any trust advisor or trust protector for the reasons stated in the trust instrument;

(7) The power to remove a trustee, cotrustee, or successor trustee, for the reasons stated in the trust instrument, and appoint a successor;

(8) The power to consent to a trustee's or cotrustee's action or inaction in making distributions to beneficiaries;

(9) The power to increase or decrease any interest of the beneficiaries in the trust, to grant a power of appointment to one (1) or more trust beneficiaries, or to terminate or amend any power of appointment granted in the trust; however, a modification, amendment or grant of a power of appointment may not grant a beneficial interest in a charitable trust with only charitable beneficiaries to any

non-charitable interest or purpose and may not grant a beneficial interest in any trust to the trust protector or trust advisor, or to the estate or for the benefit of the creditors of such trust protector or such trust advisor;

(10) The power to perform a specific duty or function that would normally be required of a trustee or cotrustee;

(11) The power to advise the trustee or cotrustee concerning any beneficiary;

(12) The power to consent to a trustee's or cotrustee's action or inaction relating to investments of trust assets;

(13) The power to direct the acquisition, disposition, or retention of any trust investment;

(14) The power to appoint under § 35-15-816(b)(27);

(15) The power to terminate all or part of a trust;

(16) The power to veto or direct all or part of any trust distribution;

(17) The power to borrow money with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(18) The power to make loans out of trust property, including but not limited to, loans to a beneficiary on terms and conditions, including without interest, considered to be fair and reasonable under the circumstances;

(19) The power to vote proxies and exercise all other rights of ownership relative to securities and business entities held by the trust;

(20) The power to select one (1) or more investment advisers, managers or counselors, including but not limited to, a trustee and delegate to them any of its powers; and

(21) The power to direct the trustee with respect to any additional powers and discretions over investment and management of trust assets provided in the trust instrument.

(b) The exercise of a power by a trust advisor or a trust protector shall be exercised in the sole and absolute discretion of the trust advisor or trust protector and shall be binding on all other persons.

(c) Any power of a trust advisor or trust protector to directly or indirectly modify a trust may be granted notwithstanding the provisions of §§ 35-15-410 through 35-15-412 and 35-15-414.

(d) An excluded fiduciary may continue to follow the direction of a trust protector or trust advisor upon the incapacity or death of the grantor of a trust if the trust instrument allows for such.

§ 35-15-1202. Trust Advisors and Trust Protectors as Fiduciaries.

(a) A trust advisor or trust protector, other than a beneficiary, is a fiduciary with respect to each power granted to such trust advisor or trust protector. In exercising any power or refraining from exercising any power, a trust advisor or trust protector shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary with respect to each power granted or reserved exclusively to any one or more other trustees, trust advisors, or trust protectors.

§ 35-15-1203. Trust Advisor and Trust Protector Subject to Court Jurisdiction.

By accepting appointment to serve as a trust advisor or trust protector, the trust advisor or the trust protector submits personally to the jurisdiction of the courts of this state even if investment advisory agreements or other related agreements provide

otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding relating to a decision, action, or inaction of the trust advisor or trust protector.

§ 35-15-1204. No Duty to Review Actions of Trustee, Trust Advisor, or Trust

Protector.

(a) Whenever, pursuant to the terms of a trust, an agreement of the qualified beneficiaries, or a court order, an excluded fiduciary is to follow the direction of a trustee, trust advisor, or trust protector with respect to investment decisions, distribution decisions, or other decisions of the non-excluded fiduciary, then, except to the extent that the terms of the trust, the agreement of the qualified beneficiaries, or the court order provide otherwise, the excluded fiduciary shall have no duty to:

(1) Review, evaluate, perform investment reviews, suitability reviews, inquiries, or investigations, or in any other way monitor the conduct of the trustee, trust advisor, or trust protector;

(2) Make recommendations or evaluations or in any way provide advice to the trustee, trust advisor, or trust protector or consult with the trustee, trust advisor, or trust protector; or

(3) Communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trustee, trust advisor, or trust protector.

(b) Absent provisions in the trust instrument to the contrary, the actions of the excluded fiduciary pertaining to matters within the scope of the trustee, trust advisor, or trust protector's authority, including but not limited to, confirming that the trustee, trust advisor, or trust protector's directions have been carried out and recording and reporting actions taken at the trustee, trust advisor, or trust protector's direction or other information pursuant to § 35-15-813, shall be deemed to be administrative actions taken

by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the terms of the trust, the agreement of the qualified beneficiaries, or the court order; such administrative actions, as well as any communications made by the excluded fiduciary to the trust advisor, trust protector or any of their agents or persons they have selected to provide services to the trust, shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor the trustee, trust advisor, or trust protector or otherwise participate in actions within the scope of the trustee, trust advisor, or trust protector's authority.

§ 35-15-1205. Fiduciary's Liability for Action or Inaction of Trustee, Trust Advisor, and Trust Protector.

An excluded fiduciary is not liable, either individually or as a fiduciary, for:

(1) Any loss resulting from compliance with a direction of a trust advisor or trust protector, including but not limited to, any loss from the trust advisor or trust protector breaching fiduciary responsibilities or acting beyond the trust advisor's or trust protector's scope of authority;

(2) Any loss resulting from any action or inaction of a trustee, trust advisor, or trust protector; or

(3) Any loss that results from the failure of a trustee, trust advisor, or trust protector to take any action proposed by the excluded fiduciary where such action requires the authorization of the trustee, trust advisor, or trust protector, provided that an excluded fiduciary who had a duty to propose such action timely sought but failed to obtain the authorization.

§ 35-15-1206. Limitation of Action Against a Trust Advisor or Trust Protector.

(a) A beneficiary may not commence a proceeding against a trust advisor or trust protector for breach of trust more than one (1) year after the date the beneficiary or

a representative of the beneficiary was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(b) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or the beneficiary's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary against a trust advisor or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trust advisor or trust protector;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(d) A trustee may not commence a proceeding against a trust advisor or trust protector for breach of trust more than one (1) year after the date the trustee or a representative of the trustee was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(e) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trustee or the trustee's representative knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(f) If subsection (d) does not apply, a judicial proceeding by a trustee against a trust advisor or trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the trust advisor or trust protector;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(g) A trust advisor or trust protector may not commence a proceeding against another trust advisor or another trust protector for breach of trust more than one (1) year after the date the trust advisor or trust protector or the respective representative of each was sent a report that adequately disclosed facts indicating the existence of a potential claim for breach of trust.

(h) A report adequately discloses facts indicating the existence of a potential claim for breach of trust if it provides sufficient information so that the trust advisor or trust protector or the respective representative of each knows of the potential claim or has sufficient information to be presumed to know of it, or to be put on notice to inquire into its existence.

(i) If subsection (g) does not apply, a judicial proceeding by a trust advisor or trust protector against another trust advisor or another trust protector for breach of trust must be commenced within three (3) years after the first to occur of:

(1) The removal, resignation, or death of the other trust advisor or other trust protector;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(j) Notwithstanding subsections (d) – (i), no trustee, trust advisor or trust protector, may commence a proceeding against a trust advisor or trust protector or another trust advisor or another trust protector if, under either subsections (a) – (c) or § 35-15-1005 (a) – (c), none of the beneficiaries may commence a proceeding against the trust advisor or trust protector for such breach of trust.

SECTION 44. Tennessee Code Annotated, Section 35-16-102, is amended by adding a new subdivision(14) as follows:

(14) Unless the context or a provision contained in this chapter provides otherwise, throughout this chapter, any form of the word “trustee,” whether singular or plural means “trustee, cotrustee or any other fiduciary” as fiduciary is defined at § 35-15-103 relative to any power or duty held by such fiduciary that could otherwise be held by a trustee, to the extent that such fiduciary is holding such a power or duty and is not an excluded fiduciary as defined at § 35-15-103 relative to that power or duty.

SECTION 45. Tennessee Code Annotated, Section 35-16-104, is amended by deleting the language “foreign court” in subdivision (i)(2)(A)(i) and replacing them with “court of another state as defined by § 35-15-103”.

SECTION 46. Tennessee Code Annotated, Section 35-16-104, is further amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b)

(1) Notwithstanding § 66-3-310, a creditor's claim under subsection (a) shall be extinguished:

(A) If the person is a creditor when the qualified disposition to an investment services trust is made, unless the action is commenced within the later of two (2) years after the qualified disposition is made or six (6) months after the person discovers or reasonably should have discovered the qualified disposition; or

(B) If the person becomes a creditor after the qualified disposition to an investment services trust is made, unless the action is commenced within two (2) years after the qualified disposition is made;

(2) If subdivision (b)(1) applies:

(A) A person shall be deemed to have discovered the existence of a qualified disposition to an investment services trust at the time any public record is made of any transfer of property relative to such qualified

disposition, including but not limited to, the conveyance of real property that is recorded in the office of the county register of deeds of the county in which the property is located or the filing of a financing statement under title 47, chapter 9, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this state; and

(B) No creditor shall bring an action with respect to a transfer of property made relative to a qualified disposition unless that creditor proves by clear and convincing evidence that the settlor's transfer relative to the qualified disposition was made with the intent to defraud that specific creditor.

SECTION 47. Tennessee Code Annotated, Section 35-16-104, is further amended by adding a new subsection (k) as follows:

(k) In addition to the provisions of subsection (j) to the extent subsection (j) applies to the laws of any foreign country:

(A) For all purposes under this chapter, the effect of the laws of any foreign country shall be the same as provided in § 35-15-107(b)(3) and (b)(4); and

(B) Subsection (a) applies in addition to all other provisions of this chapter.

SECTION 48. The topic headings and tag-lines in this act are for reference purposes only and do not constitute a part of the law enacted hereby. However, the Tennessee Code Commission is requested to include such descriptive headings in any compilation or publication containing the provisions of this act, and to make any conforming adjustments in other provisions of Title 35 which are amended or revised. Furthermore, the Tennessee Code Commission is requested to change the following topic headings and tag-lines as follows:

(1) **35-15-108. Place of administration – Sufficient nexus for a state jurisdiction provision - Place of administration.**

(2) Tennessee Code Annotated, Title 35, Chapter 15, Part 5; replace the current heading - tag line of the part with the following:

Part 5—Creditor’s Claims — Mandatory, Support and Discretionary Interests – Effect of Spendthrift Provision

(3) Tennessee Code Annotated, Title 35, Chapter 15, Part 9; replace the current heading - tag line of the part with the following:

Part 9—“Uniform Principal and Income Act” and “Tennessee Uniform Prudent Investor Act of 2002” Incorporated

(4) § 35-15-1005; replace the current heading - tag line of the section with the following:

§ 35-15-1005. Limitation of action against trustee by a beneficiary; Limitation of action against trustee by a trustee, trust advisor or trust protector.

(5) Tennessee Code Annotated, Title 35, Chapter 15, Part 12; make the heading - tag line of the part the following:

Part 12—Trust Protectors and Trust Advisors

SECTION 49. The Tennessee Code Commission is requested to publish in the Tennessee Code Annotated the revisions required to conform to the current state of the law official comments for Chapters 6, 14, 15 and 16 of Title 35 that are filed with the executive secretary of the Tennessee Code Commission by June 15, 2013, unless a later date is provided by said secretary, by members of the Estate and Probate Section of the Tennessee Bar Association, the Probate Study Committee of the Tennessee Bar Association and the Trust Committee of the Tennessee Bankers Association.

SECTION 50.

(a) This act shall take effect July 1, 2013, the public welfare requiring it.

(b) Except as otherwise provided in this act, on such effective date:

(1) This act applies to all trusts created before, on, or after such effective date;

(2) This act applies to all judicial proceedings concerning trusts commenced on or after such effective date;

(3) This act applies to judicial proceedings concerning trusts commenced before such effective date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this act does not apply and the superseded law applies;

(4) Any rule of construction or presumption provided in this act applies to trust instruments executed before such effective date unless there is a clear and express indication of a contrary intent in the terms of the trust; and

(5) An act done before such effective date is not affected by this act.

(c) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before such effective date, that statute continues to apply to the right even if it has been repealed or superseded.